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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF WASHINGTON  
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7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 EMMITT W. TUCKER,

11 Defendant.  
12

NO. 2:16-CR-00016-JLQ

ORDER ON MOTION FOR  
PROTECTIVE ORDER

13 BEFORE THE COURT is the Government's Motion for Protective Order (ECF No.  
14 17), Motion to Expedite (ECF No. 18) and Notice of Intent to Withhold Discovery (ECF  
15 No. 16). Both the Notice and the Motion for Protective Order pertain to confidential  
16 source/informant discovery. The Notice proposes to allow defense counsel to view and  
17 listen to audio and video surveillance at the U.S. Attorney's Office, but not to provide  
18 copies of the audio and video recordings. The Government also proposes to withhold  
19 documentary evidence that would reveal the identifying information of the confidential  
20 informant until 10 days prior to trial. The Motion for Protective Order primarily limits  
21 the copying of information specifically identifying confidential sources, and dissemination  
22 of such material.

23 It is not generally unreasonable or unusual for the Government to withhold the  
24 identity of a confidential source during pretrial proceedings. The Government has a  
25 qualified or limited privilege to withhold from disclosure the identity of persons who  
26 furnish information about violations of law to law enforcement. *United States v. Amador-*

1 *Galvan*, 9 F.3d 1414, 1417 (9<sup>th</sup> Cir. 1993) citing *Roviaro v. United States*, 353 U.S. 53, 59  
2 (1957). “The privilege identified in *Roviaro* protects more than just the name of the  
3 informant and extends to information that would tend to reveal the identity of the  
4 informant.” *United States v. Napier*, 436 F.3d 1133, 1136 (9<sup>th</sup> Cir. 2006).

5 In *Napier*, the Ninth Circuit stated, “the information regarding the drug sales sought  
6 by [defendant], which would tend to reveal the informant’s identity, is protected to the  
7 same extent as the confidential informant’s name.” *Id.* The Defendant “bears the burden  
8 of demonstrating the need for disclosure of a confidential informant’s identity.” *United*  
9 *States v. Amador-Galvan*, 9 F.3d 1414, 1417 (9<sup>th</sup> Cir. 1993). The Defendant must show  
10 “more than a mere suspicion that the informant has information which will prove relevant  
11 and helpful or will be essential to a fair trial.” *Id.* There is currently no pending defense  
12 objection or motion seeking additional information concerning the confidential sources. It  
13 may be that there is no dispute between the parties regarding the adequacy of the  
14 information provided, or the Government’s proposed plan for handling audio and video  
15 recordings.

16 **IT IS HEREBY ORDERED:**

- 17 1. The Motion to Expedite (ECF No. 18) is **GRANTED**.  
18 2. The Motion for Protective Order (ECF No. 17) is **GRANTED IN PART and**  
19 **DENIED IN PART** as set forth herein:  
20 A. The Government shall provide discovery materials as previously Ordered by the  
21 court;  
22 B. Defense counsel shall not make unnecessary copies of discovery materials, but  
23 may make necessary working copies;  
24 C. Defense counsel may show to, and discuss with, their client the discovery  
25 materials, including sealed documents;  
26

1 D. Defense counsel shall not give Mr. Tucker original or copies of discovery  
2 materials, or summaries thereof, other than to show to or discuss with the Defendant in the  
3 presence of counsel; and

4 E. Defense counsel shall not provide copies or originals of discovery to any other  
5 person, other than those persons assisting defense counsel such as office staff, experts, or  
6 investigators.

7 3. The parties are encouraged to work together cooperatively in the discovery  
8 process. If the Defendant believes the Government's proposed method for handling  
9 confidential information does not provide adequate access, it may be addressed by  
10 appropriate motion.

11 4. The Government shall provide information to defense counsel regarding the  
12 criminal history of the confidential informant(s) involved in this case, as well as  
13 information concerning all benefits that have been provided, or promised, to the  
14 informants for their activities involving Defendant. Such information shall be provided no  
15 later than **February 19, 2016**.

16 5. Subject to further Order of the court, the Government may withhold the specific  
17 identity of the confidential informant(s) until two weeks prior to the date set for trial.

18 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order and furnish  
19 copies to counsel.

20 **DATED** this 2nd day of February, 2016.

21 s/ Justin L. Quackenbush  
22 JUSTIN L. QUACKENBUSH  
23 SENIOR UNITED STATES DISTRICT JUDGE  
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